Supreme Court, U.S.
FILED
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83

No. 07-1017

In the Supreme Court of the United States

CASTLE ROCK ESTATES, LLC,
Petitioner,
v.

THE STATE OF NEW JERSEY, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, THE TOWNHIP OF WEST MILFORD, THE GOVERNING BODY OF TOWNSHIP OF WEST MILFORD, THE PLANNING BOARD OF THE TOWNSHIP OF WEST MILFORD AND JOHN DOES I THROUGH V, PERSONS AND/OR ENTITIES WHO COOPERATED, AND/OR PARTICIPATED IN THE WRONGS ALLEGED HEREIN BUT ARE AS YET UNIDENTIFIED,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does N.J.S.A. 13:20-35(d) violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution in that it authorizes the assessment of serious, coercive civil penalties prior to administrative review in violation of *Thunder Basin Cool Co. v. Reich*, 510 U.S. 200, 114 S.Ct. 771 (1994)?

2. Does N.J.S.A. 13:20-35(d) violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution in that it authorizes the levy on serious, coercive civil penalties prior to judicial review?

3. Did the New Jersey Courts violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution by totally depriving Petitioner of discovery on its as applied claims for relief?

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LIST OF ALL PARTIES

The caption of this case contains the names of all the parties, pursuant to Supreme Court Rule 14(b).

Corporate Disclosure of Statement Pursuant to Supreme Court Rule 29.6

Petitioner Castle Rock Estates LLC is a limited liability company.

There is no parent or publicly-held company owning 10% or more of the units of Castle Rock Estates LLC.

Statement of the Basis for Jurisdiction

The Order denying the Petition for Certification was entered by the New Jersey Supreme Court on November 16, 2007. (A-1)

The Court has jurisdiction to review this Petition for a Writ of Certiorari pursuant to 28 U.S.C. §1257(a) in that the aforesaid Order Denying Petitioner's Petition for Certification draws in question the validity of a New Jersey statute on the ground of its being violative of the United States Constitution.

Constitutional Provisions and Statutes Involved

1. Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. N.J.S.A. 13:20-35(d) provides:

> The commissioner is authorized to assess a civil administrative penalty of up to $25,000 for each violation of any provision of section 32 of this act, a Highlands permitting review approval issued pursuant to section 36 of this act, or any rule or regulation adopted pursuant to sections 33 and 34 of this act, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration. In adopting rules and regulations establishing the amount of any penalty to be assessed, the

commissioner may take into account the economic benefits from the violation gained by the violator. No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service. The notice shall: (1) identify the section of the law, rule, regulation, permit, approval, or authorization violated; (2) recite the facts alleged to constitute a violation; (3) state the amount of the civil penalties to be imposed; and (4) affirm the rights of the alleged violator to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative penalty is in addition to all other enforcement provisions in this act and in any other applicable law, rule, or regulation, and the payment of any assessment shall not be deemed to

affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation.

Statement of the Case

This appeal concerns the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1, *et seq.* ("the Highlands Act" or "the Act") a complex and confusing regulatory scheme that has created uncertainty and injustice in the development of real property in New Jersey. (A-5 – A-17)

The federal questions were raised in the New Jersey trial courts by motions for summary judgment, which resulted in the dismissal of all of Petitioner's claims. (A-11)

The New Jersey Appellate Division considered and rejected the Due Process arguments raised in the present Petition for a Writ of Certiorari (A-5 – A-17).

The New Jersey Supreme Court denied Petitioner's Petition for Certification (A-1).

Petitioner is the contract purchaser and

developer of a parcel of realty in Respondent Township of West Milford (Passaic County, New Jersey).

On May 6, 2004, after several adjournments, some of which occurred prior to the effective date of the Highlands Act, Defendant Planning Board adopted Resolution No. 2004-11 ("the Resolution") granting preliminary subdivision and bulk variance approval with conditions regarding Petitioner's property. (A-8)

In August 2004, the New Jersey Legislature passed the Highlands Act, making it retroactive to projects that received certain requisite approvals between March 30, 2004 and August 9, 2004. Thus, the Highlands Act applies to Petitioner's property that received approval in May 2004.

Argument

A. The New Jersey Appellate Court Opinion Violates *Thunder Basin Coal Co. v. Riech*, 510 U.S. 200, 114 S. Ct. 771 (1994)

The relevant statutory language is contained in N.J.S.A. 13:20-35(d) and could not be clearer:

> d. The commissioner is authorized to assess a civil administrative penalty of up to $25,000 for each violation of any provision of section 32 of this act, a Highlands permitting review approval issued pursuant to section 36 of this act, or any rule or regulation adopted

pursuant to sections 33 and 34 of this act, and each day during which violation continues shall constitute an additional, separate, and distinct offense . . . No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service... The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. ...The authority to levy an administrative penalty is in addition to all other enforcement provisions in this act and in any other applicable law, rule or regulation, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. [Emphasis added].

The plain language of N.J.S.A. 13:20-35 (d) authorizes an assessment of a civil administrative penalty prior to administrative review – and prior to

even notice of a hearing concerning administrative review.

N.J.S.A. 13:20-35(b)(5), provides that the Commissioner "may", not shall, "provide notice to the person of the right to a hearing on the matters contained in the order." Contrary to the New Jersey Appellate Division opinion, under N.J.S.A 13:20-35(b)(5) the commissioner may "find a person in violation of" a provision of the Highlands Act without prior notice or a hearing. Even worse, after an adverse finding, the Commissioner is not required to provide notice to the aggrieved party "of the right to a hearing on the matters contained in that order." Ironically, in relying upon the clear language of N.J.S.A. 13:20-35(d)(4), concerning notice of the rights of a violator to a hearing after the issuance of a notice of civil administrative penalty, the New Jersey Appellate Division acknowledged inferentially that an administrative hearing comes after an assessment of a civil administrative penalty. A fatal error in the New Jersey Appellate Division Opinion below is its failure to quote the controlling, clear language concerning the timing of, and right to, a judicial hearing prior to a levy, to wit: "No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service" [of an assessment made by the Commissioner]. This legislative expression authorizes a levy on an assessment prior to judicial review. The words could not be clearer.

It follows logically and necessarily from the *ratio decidendi* of *Thunder Basin Coal Co.* that N.J.S.A. 13:20-35(d) is constitutionally infirm in

that: a) it authorizes an assessment of substantial civil penalties prior to administrative review; b) it absolutely precludes judicial review prior to a levy of coercive civil penalties; c) compliance with the Highlands Act regulatory scheme is quite onerous; and d) the available sanctions – potent, escalating civil monetary penalties, holding in abeyance a development project, and exposure to criminal sanctions prior to judicial review - are sufficiently severe to confront citizens with a "constitutionally intolerable" choice.

B. The New Jersey Courts Deprived Petitioner Of Its Federal Due Process Rights By Dismissing The As Applied Claims For Relief Without Affording Petitioner A Shred of Discovery.

The New Jersey Courts below deprived Petitioner of its fundamental right to be heard on its as applied claims for relief, i.e., the causes of action concerning the application of the Highlands Act to Petitioner's property, which were dismissed without affording Petitioner a shred of discovery.

This being the case, the New Jersey Courts below violated Petitioner's federal constitutional right to due process. *See, Logan v. Zimmerman,* 455 U.S. 422, 424, 102 S.Ct. 1148, 1151-1152 (1982) (State "may [not] terminate a complainant's cause of action because a state official, for reasons beyond the complainant's control, failed to comply with a statutorily mandated procedure."); *Lindsey v. Normet,* 405 U.S. 56, 77, 92 S.Ct. 862, 876 (1972) (due process does not require appellate review of an

eviction decision premised on a double- bond requirement "if a full and fair trial on the merits is provided;"); *Boddie v. Connecticut*,401 U.S. 371, 380, 91 S.Ct. 780, 787 (1971) (State cannot deny potential civil litigants use of a lawful adjudicatory procedure when such an action would be "the equivalent of denying them an opportunity to be heard under their claimed right."); compare *Logan*, *Lindsey* and *Boddie* with *Sosna v. Iowa,* 419 U.S. 393, 410, 95 S.Ct. 553, 562-563 (1975), 95 S.Ct. 553, (court upheld Iowa's one-year durational residency requirement for invoking its divorce jurisdiction because statute was a reasonable regulation that merely required a civil litigant to wait the requisite period of time).

CONCLUSION

In light of the above, particularly because "a state court... has decided an important question in a way that conflicts with relevant decisions of this Court," I respectfully request that the Court grant the present Petition for a Writ of Certiorari.

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Counsel for Petitioner

SUPREME COURT OF NEW JERSEY
C-356 September Term 2007
61,680

CASTLE ROCK ESTATES, LLC,
Petitioner-Petitioner,

v.

ON PETITION
FOR CERTIFICATION

THE STATE OF NEW JERSEY,
THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION OF THE STATE OF
NEW JERSEY, et al.,
Respondents-Respondents.

[DATE STAMP]
FILED
NOV 20 2007
/s/
CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5389-05 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Virginia A. Long, Presiding Justice, at Trenton, this 16th day of

November, 2007.

/s/
CLERK OF THE SUPREME COURT

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Attorneys for Petitioner Castle Rock Estates, LLC

SUPREME COURT OF NEW JERSEY
Docket No.

Appellate Division Docket No. A-005389-05T1

Civil Action

NOTICE OF PETITION FOR CERTIFICATION

[DATE STAMP]
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CLERK'S OFFICE

CASTLE ROCK ESTATES, LLC,
Plaintiff,

vs.

THE STATE OF NEW JERSEY, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, THE TOWNHIP OF WEST MILFORD, THE GOVERNING BODY OF TOWNSHIP OF WEST MILFORD, THE PLANNING BOARD OF THE TOWNSHIP OF WEST MILFORD and JOHN DOES

I THROUGH V, PERSONS AND/OR ENTITIES WHO COOPERATED, AND/OR PARTICIPATED IN THE WRONGS ALLEGED HEREIN BUT ARE AS YET UNIDENTIFIED,

Defendants.

TO: Clerk
New Jersey Supreme Court
Hughes Justice Center
25 W. Market St.
P.O. Box 970
Trenton, NJ 08625-0970

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2. Order:

Petitioner appeals from each and every part of the Appellate Division Decision dated August 10, 2007.

PRICE, MEESE, SHULMAN & D'ARMINIO, PC
Attorneys for Petitioner Castle Rock Estates, LLC

By: /s/
ELLIOTT LOUIS PELL, ESQ.

Dated: August 24, 2007

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5389-05T1

CASTLE ROCK ESTATES, LLC,
Plaintiff-Appellant,

v.

THE STATE OF NEW JERSEY, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, THE TOWNSHIP OF WEST MILFORD·, THE GOVERNING BODY OF THE TOWNSHIP OF WEST MILFORD, and THE PLANNING BOARD OF THE TOWNSHIP OF WEST MILFORD,

Defendants-Rcspondcnts.

Argued June 5, 2007 - Decided August 10, 2007

Before Judges Skillman, Lisa and Holston, Jr.

On appeal from Superior Court of New Jersey, Law Division, Passaic County, Docket No. L3218-05.

Elliott Louis Pell argued the cause for

appellant (Price Meese Shulman & D'Arminio, attorneys; Mr. Pell, of counsel and on the brief).

Barbara L. Conklin, Deputy Attorney General, argued the cause for respondents state of New Jersey and Department of Environmental Protection (Stuart Rabner, Attorney General, Patrick DeAlmeida, Assistant Attorney General, of counsel; Ms. Conklin, on the brief).

Bryant Gonzalez argued the cause for respondent Township of West Milford Planning Board (Weiner Lesniak, attorneys; Mr. Gonzalez, on the brief).

Dorsey & Semrau, attorneys for respondent Township of West Milford (also named as the Governing Body of the Township of West Milford), join in the brief of West Milford Planning Board.

PER CURIAM

Plaintiff Castle Rock Estates is the contract purchaser of a twenty-eight acre undeveloped tract of land in West Milford Township, Passaic County. In late 2003, Castle Rock applied to the West Milford Planning Board for preliminary major subdivision approval to subdivide its property into seventeen residential building lots. On January 4, 2004, the

Board notified Castle Rock that it was required to obtain bulk variances. Castle Rock applied for the required variances on February 13, 2004, and three days of hearings on Castle Rock's application were held in March, April and May 2004. Castle Rock also applied to the Department of Environmental Protection (DEP) and other agencies for various permits required to proceed with its development project.

While Castle Rock's application was pending before the Planning Board, the bill that became the Highlands Water Protection and Planning Act (Highlands Act), N.J.S.A. 13:20-1 to -35, was introduced in the Legislature on March 29, 2004. This bill provided for the establishment of a state agency, called the Highlands Water Protection and Planning Council (Highlands Council), N.J.S.A. 13:20-4, which was delegated responsibility for land use planning in the Highlands Region, consisting of 800,000 acres in eighty-eight municipalities in northwestern New Jersey, including West Milford. The Highlands Act creates two areas within the Region: a preservation area, in which further development is strictly regulated, and a planning area, in which development consistent with the Act's goals is encouraged. *See* N.J.S.A. 13:20-7(b)(1); N.J.S.A.13:20-10(b), (c). Castle Rock's property is located in the preservation area.

On June 10, 2004, the Senate and General Assembly passed the Highlands Act, and on August 10, 2004, the Governor signed the Act into law.

On May 6, 2004, during the period the bill that became the Highlands Act was proceeding through the Legislature, the Board granted Castle Rock subdivision approval to create sixteen lots, fifteen of them residential building lots, on its property. However, the Highlands Act only exempts from its provisions a major Highlands development project that obtained preliminary subdivision or other required approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -129, and one of a list of designated approvals from the DEP, before the Act was introduced in the Legislature on March 29, 2004. N.J.S.A. 13:20-28. Therefore, Castle Rock's proposed subdivision is subject to the Highlands permitting review program provided under N.J.S.A. 13:20-33 even though it obtained preliminary subdivision approval while the Act was pending before the Legislature.

In addition, Castle Rock's application for a General Permit No. 6 under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 to -30, was pending before the DEP at the time of enactment of the Highlands Act. Shortly thereafter, the DEP notified Castle Rock by letter that under the Act it was no longer eligible for the General Permit No. 6 wetlands permit for which it had applied. The letter included detailed instructions as to how Castle Rock could obtain the required approvals for its development project under the Act.

Castle Rock requested an adjudicatory hearing before the Office of Administrative Law to challenge this ruling. On May 10, 2005, the DEP

sent a letter to Castle Rock denying the request for an adjudicatory hearing as to the unavailability of the wetlands permit. Castle Rock appealed the denial of a adjudicatory hearing to this court, and we affirmed the DEP's final decision in an unreported opinion. *In re Castle Rock Estates*, No. A-5564-04T1 (decided July 19, 2006). We stated in the course of our opinion:

> Not until May 6, 2004, did appellant receive preliminary subdivision approval to divide the property into residential lots, and because of this, development of the property is subject to the permit requirements of the Act. The Act went into effect on August 10, 2004, and established environmental standards for development in the preservation area. It also required a Highlands Preservation Area Approval for major development within the Preservation area.
>
> . . . . .
>
> . . . Appellant's request clearly was within the Preservation Area of the Highlands Region, pursuant to N.J.S.A. 13:20-7, and therefore required Highlands approval. No issue of disputed fact could be adjudicated in the Office of Administrative Law, and the action of the Department of May 10,

2005, denying appellant's hearing request is affirmed.

However, our opinion noted that we were not passing on the constitutional issues presented in this action, which had been filed approximately a year after enactment of the Highlands Act.

Castle Rock's complaint consisted of 328 numbered paragraphs and asserted 78 "claims for relief." The complaint claimed that the Highlands Act is unconstitutional in various respects both on its face and as applied to Castle Rock's property. The complaint also asserted claims against West Milford and the Board based on alleged intentional delays by municipal officials in considering plaintiff's application for preliminary subdivision and variance approval, which was granted after the March 29, 2004 cutoff date for approvals that were exempt from the Highlands Act restrictions.

The case was brought before the trial court by motions for summary judgment, which eventually resulted in the dismissal of all of Castle Rock's claims. The court also denied Castle Rock's motion to file a second amended complaint asserting additional federal constitutional claims.

On appeal from the orders dismissing its complaint and denying its motion to amend its complaint, Castle Rock presents the following arguments:

I. SINCE THE PROCEDURES FOR RESOLVING DISPUTES BETWEEN ORDINARY CITIZENS AND THE SOVEREIGN UNDER THE HIGHLANDS ACT CONTRAVENE THE FEDERAL DUE PROCESS GUARANTEE, AS A MATTER OF FEDERAL CONSTITUTIONAL LAW, THE TRIAL COURTS COMMITTED REVERSIBLE ERROR IN DISMISSING - AND IN FAILING TO GRANT PARTIAL SUMMARY JUDGMENT - ON THE SIXTY-SECOND, SEVENTY-FIFTH AND SEVENTY-SIXTH CLAIMS FOR RELIEF.

[A.] INTRODUCTION

[B.] The Highlands Act Absolutely Prohibits Pre-Enforcement Judicial Review Of All Legal Issues Raised By Persons, But Permits Pre-Enforcement Judicial Review Of All Legal Questions Raised By The Sovereign.

[C.] The Highlands Act Absolutely Precludes Judicial Review Of All Legal Issues Raised By Citizens Prior To" The Mandatory Imposition Of Serious Civil Sanctions On Them.

[D.] *Thunder Basin Coal Co. v.*

Reich, 510 U.S. 200 (1994) Mandates The Invalidation Of N.J.S.A. 13:2017(a)(2), N.J.S.A. 13:20-25, N.J.S.A. 13:20-35(a), N.J.S.A. 13:20-35(c) And N.J.S.A. 13:20-35(d) On Federal Due Process Grounds.

[E.] Application Of The Tripartite Test Enunciated In *Matthews v. Eldridge*, 424 U.S. 319 (1976) Compellingly Induces The Conclusion That N.J.S.A. 13:20-17(a)(2), N.J.S.A. 13:20-25, N.J.S.A. 13:20-35(a), N.J.S.A. 13:20-35c And N.J.S.A. 13:2035(d) Contravene The Federal Due Process Guarantee.

[1] The Private Interests That Have Been, And Will Be, Affected By Government Action Are Very Critical.

[2] The Risk Of Erroneous Deprivations Of Citizens' Property Interests From Application Of The Unfair Procedures Contained In The Highlands Act Is Very Substantial, And The Value of Additional Safeguards Is Very Considerable.

[3] The State's Interests Will Be Promoted By Pre-Deprivation

Review.

[F.] The Highlands Act Authorizes The Sovereign To Expose Citizens To Criminal Sanctions After It Has Already Imposed Serious Civil Penalties On Them Prior To Judicial Review.

[G.] The Highlands Act Permits All Causes Of Action Relating To The Regulatory Scheme To Proceed In A Summary Manner Under. R. 4:67.

II. SINCE APPELLANT WAS DEPRIVED OF A MEANINGFUL OPPORTUNITY TO BE HEARD ON THE AS APPLIED CLAIMS FOR RELIEF SET FORTH IN THE AMENDED COMPLAINT, THE TRIAL COURTS VIOLATED APPELLANT'S FEDERAL CONSTITUTIONAL RIGHT OF DUE PROCESS OF LAW.

III. THE TRIAL COURT ERRED REVERSIBLY IN DISMISSING APPELLANT'S CAUSE OF ACTION FOR A GOVERNMENTAL TAKING OF ITS PROPERTY WITHOUT JUST COMPENSATION ON THE GROUNDS OF RIPENESS AND FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

IV. SINCE THE RETROACTIVE PROVISION OF N.J.S.A. 13:20-28(a)(3) IS IRRATIONAL AND FUNDAMENTALLY UNFAIR, IT VIOLATES THE FEDERAL DUE PROCESS GUARANTEE AND, THEREFORE, THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING THE TWENTY-FIRST CLAIM FOR RELIEF.

V. THE ABSOLUTE IMMUNITY OF STATE PROJECTS FROM THE HIGHLANDS ACT BASED UPON AN AD HOC DECISION BY A COMPETING BUREAUCRAT THAT THE PROJECT IS NECESSARY FOR THE PUBLIC INTEREST, REGARDLESS OF THE PROJECT'S EFFECT UPON THE ESSENTIAL SOURCES OF DRINKING WATER IN NEW JERSEY, IS IRRATIONAL, AS A MATTER OF FEDERAL CONSTITUTIONAL LAW AND, THEREFORE, THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING THE THIRTY-NINTH THROUGH FORTY-FOURTH CLAIMS FOR RELIEF.

VI. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING PLAINTIFF LEAVE TO FILE THE SECOND AMENDED COMPLAINT.

VII. SINCE THE NOTICE PROVISIONS OF THE TORT CLAIMS ACT CANNOT BE RELIED ON AS A DEFENSE TO A CIVIL RIGHTS CLAIM UNDER 42 U.S.C. SECTION 1983, THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING THE TOWNSHIP DEFENDANTS' MOTION TO DISMISS ON THAT BASIS.

Simultaneous with the filing of this opinion, we are filing our opinion in *OFP, L.L.C. v. State*, ___ N.J. Super. ___ (App. Div. 2007), which also involved challenges to the constitutionality of the Highlands Act. The arguments Castle Rock presents in Points III and IV of its brief are similar to arguments addressed in sections I and II(A) of the *OFP* opinion, and we reject those arguments substantially for the reasons set forth in *OFP*.

We affirm the dismissal as untimely of Castle Rock's state law claims against West Milford and its Planning Board substantially for the reasons set forth in Judge Sokalski's May 10, 2006 oral opinion. Although the single federal claim set forth in Castle Rock's amended complaint was not subject to the notice provisions of the Tort Claims Act, N.J.S.A. 59:1-1 to -7, this claim is patently without merit. *See* R. 2:11-3(e)(1)(E). Therefore, Castle Rock's federal claim was also properly dismissed.

Our review of the trial court's denial of Castle Rock's motion for leave to file a second amended complaint asserting additional federal claims is

limited to determining whether the court abused its discretion. *Brown v. Twp. of Old Bridge*, 319 N.J. Super. 476, 513 (App. Div.), *certif. denied,* 162 N.J. 131 (1999). When Castle Rock filed its motion to amend, this action had been pending for eight months and the discovery end date had passed. Furthermore, Castle Rock did not make even a prima facie showing that any of the new federal claims it sought to assert had any merit. *See Interchange State Bank v. Rinaldi*, 303 N.J. Super. 239, 257 (App. Div. 1997) (noting that "there is no point in permitting the filing of an amended pleading when a subsequent motion to dismiss must be granted") (quoting *Mustilli v. Mustilli,* 287 N.J. Super. 605, 607 (Ch. Div. 1995). Therefore, we conclude that the trial court did not abuse its discretion in denying Castle Rock's motion to file a second amended complaint.

The arguments that Castle Rock presents under Points I, II and V of its brief are clearly without merit. R. 2:11-3(e)(1)(E). Only one of those arguments warrants short discussion. Castle Rock's primary argument in Point I is that the Highlands Act violates the Due Process Clause of the Fourteenth Amendment because it authorizes the Commissioner of the DEP to impose monetary penalties for violations of the Act without any opportunity for administrative or judicial review. However, the Act in fact provides an opportunity for both administrative and judicial review of any decision by the DEP. N.J.S.A. 13:20-35(b)(5) plainly states that whenever the Commissioner issues an order citing a person for violation of the Act, any

implementing regulation, or a Highlands permit, the Commissioner shall describe the violation, require compliance or restoration and "*provid[e] notice to the person of the right to a hearing on the matters contained in the order.*" (Emphasis added.) N.J.S.A. 13:20-35(d)(4) provides that if the Commissioner issues a notice of civil administrative penalty for a violation of the Act, its rules, or a Highlands permit, the Commissioner must notify the violator in writing of the facts alleged, the amount of the penalty to be imposed and "*affirm the rights of the alleged violator to a hearing.*" (Emphasis added.) The right to judicial review of any final decision by a state administrative agency is specifically protected by the New Jersey Constitution and implementing court rules. N.J. Const. art. VI, § 5, par. 4; R. 2:2-3(a)(2); R. 2:2-4; *see In re Senior Appeals Examiners,* 60 N.J. 356, 363 (1972). Even if there were ambiguity in the Act (and we do not find such ambiguity), it would have to be read to preserve the constitutionally protected right to administrative and judicial review of administrative action. *See In re Grant of Charter Sch. Application of Englewood on Palisades Charter Sch.,* 164 N.J. 316, 329 (2000) (noting that "[t]he Legislature is presumed to have full knowledge of, and to act consistently with, the constitution's requirements") Therefore, we reject Castle Rock's argument that the Highlands Act provides for the imposition of administrative penalties without any opportunity for "pre-enforcement judicial review." *See Thunder Basin Coal Co. v. Reich,* 510 U.S. 200, 216-18, 114 S.Ct. 771, 780-81, 127 L.Ed. 2d 29, 43-44 (1994).

Affirmed.